

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

**Application of:** Gerald H. Ablan  
**Serial No:** 09/644,411  
**Examiner:** Calvin L. Hewitt II  
**Art Group:** 3621  
**Reference No.:** 4A02.1-010  
**Application Filed:** 23 August 2000  
**Title:** Auction Management System

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia

18 December, 2007

**Customer No. 35725**

**REPLY BRIEF**

This Reply Brief is timely filed electronically within two months from the Examiner's Answer dated 18 October 2007. Applicant has concurrently filed a Request for Oral Hearing with this Reply Brief.

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**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being filed with the United States Patent and Trademark electronically via the EFS-Web on 18 December 2007.

**/Michael J. Mehrman/**

Michael J. Mehrman, Reg. 40,086

**Real Party In Interest:**

The real party in interest is Marketworks, Inc., Assignee of the application.

**Related Appeals/Interferences:**

This is the only pending appeal of the subject application. Applicant is not aware of any pending interferences concerning the application.

**Status Of Claims:**

Claims 67-85 are pending and currently stand rejected under 35 U.S.C. §103(a). Claims 67, 73 and 82 are independent claims. The status of the claims is as follows:  
Claims 1-66 are canceled;  
Claims 67-85 are currently pending (previously presented) and stand rejected;  
Claims 67-85 are involved in the present Appeal.

**Status Of Amendments:**

The last amendment prior to the Notice of Appeal was filed on 24 August 2006 in response to the Office Action dated 24 May 2006. Applicant filed a Notice of Appeal on 2 February 2007 in response to the Final Rejection dated 6 November 2006. An amendment subsequently filed on 11 April 2007 has been entered to correct certain informalities in the pending claims.

**Summary Of Claimed Subject Matter:**

Claims 73-81 are directed to an electronic auction monitoring report with alterable tracking fields for identifying the status of post-sale activities. Claims 82-85 are directed to a menu-driven utility for creating, storing and posting auction submissions. Claim 67-73 are combination claims that recite features of the auction monitoring report and features of the menu-driven utility in combination with an auction consolidation engine.

**Grounds Of Rejection To Be Reviewed On Appeal:**

Whether Claims 67-69, 71-75, 77, 79-82 and 85 are patentable over Rackson et al., U.S. Pat. No. 6,415,270 ("Rackson") in view of Conklin et al., U.S. Pat. No. 6,141,653 ("Conklin") under 35 U.S.C. §103(a); and whether Claims 70, 76, 78, 83 and

84 are patentable over Rackson and Conklin in further view of Robinson et al., U.S. Pat. No. 5,915,022 ("Robinson") under 35 U.S.C. §103(a).

More specifically, this appeal requires the resolution of three substantive points of contention concerning the scope and content of the cited references:

(a) whether Rackson discloses or suggests a menu-driven utility for creating, storing and posting auction submissions as recited in Claim 82;

(b) whether Rackson in combination with Conklin disclose or suggest an auction monitoring report with alterable tracking fields for identifying the status of post-sale activities as recited in Claim 73; and

(c) whether Rackson in combination with Conklin disclose or suggest an auction management system that includes a menu-driven utility for creating, storing and posting auction submissions; an auction monitoring report with tracking fields for identifying the status of post-sale activities; and an auction consolidation engine as recited in Claim 67.

#### **Mapping Of Independent Claims To Specification And Drawings**

The following description refers to the subject application ("App.") with page and line references in page/line format (e.g., App. at page 10, line 12 = App. at 10/12). Element numerals shown on the figures are indicated in bold within parentheses.

#### **Claim 67:**

Referring to Fig. 1, claim 67 is directed to a computer-readable medium storing computer-executable instructions for causing a computer-controlled apparatus, referred to as the auction consolidator **(20)** in the illustrated embodiment, to implement an auction management system **(10)**. See App. at 8/21-9/19. The full set of computer-executable instructions are described with reference to the flow charts of Figs. 5-15. See App. at 12/15-25/15.

Referring to Fig. 4, the auction management system includes a menu-driven utility, in this example a module referred to as flashpost **(30)**, which is configured to assemble auction submissions, stored them in an ad queue **(64)**, and submit them to an auction site **(12)**. Flashpost **(30)** automatically assembles the auction submissions from libraries containing predefined advertisement templates **(50, 60)**, product images **(48)**, textual descriptions **(62)**, and user-specified auction parameters entered into the advertisement templates, and stores the auction submissions in the electronic auction

submission library or ad queue **(64)**. See App. at 4/11-17 and 11/20-12/14. Fig. 2 shows the reusable components **(46, 48, 50)** used to create the auction submissions stored in a relational database **(40)**. See App. at 9/20-23.

Referring to Figs. 16 and 17, the auction management system includes an electronic auction monitoring report **(1600, 1700)** configured to display a plurality of auction management records **(1602)** within a common view, wherein each auction management record displays information **(1603, 1604, 1606, 1608, 1610, 1612, 1614)** pertaining to a respective auction submission. The auction monitoring report also includes tracking fields **(1620, 1702, 1704)** identifying post-sale activities to be performed in connection with the sale. See App. at 5/4-14 and 24/1-17. Referring to Fig. 17, the auction monitoring report **(1700)** shows that the views of the tracking fields **(1702, 1704)** associated with individual auction records are alterable to indicate a completion status of its associated post-sale activity. See App. at 25/16-24.

Referring to Figs. 2-3, the auction management system includes an auction consolidation engine **(20)**, which in this example includes modules referred to as the finalizer **(28)**, the parser **(32)**, and the auction monitor **(32)**. The auction consolidation engine **(20)** is configured to post the auction submissions to one or more electronic auction sites **(12)** in accordance with the user-specified auction parameters, automatically revisit the auction sites, extract updated auction information pertaining to the auction submissions, update the auction monitoring report with the updated auction information, determine that a successful auction submission has resulted in a sale to a buyer, and update the auction management record for the successful auction submission with closed auction data associated with the sale. See App. at 2/23-5/3; 9/20-11/19. The computer implemented process is also described in detail with reference to Figs. 8 and 9. See App. 4/11-17 and 16/27-17/24.

**Claim 73:**

Referring to Fig. 1, claim 73 is directed to a computer-readable medium storing computer-executable instructions for causing a computer-controlled apparatus, referred to as the auction consolidator **(20)** in the illustrated embodiment, to implement an auction management system **(10)**. See App. at 8/21-9/19. The full set of computer-

executable instructions are described with reference to the flow charts of Figs. 5-15. See App. at 12/15-25/15.

Referring to Fig. 5, the auction management system creates a plurality of auction submissions for offering items for sale at auction **(502)**, which is shown in greater detail on Figs. 6-9. See App. at 13/28-17/24. The auction management system also posts the auction submissions to one or more auction sites **(504)**, as shown in greater detail on Fig. 10, and monitors auctions **(506)**, as shown in greater detail on Fig. 11. See App. at 17/25-20/19. Referring to Figs. 16 and 17, the auction management system also displays an auction monitoring report **(1600, 1700)** comprising a plurality of auction management records **(1602)** displayed within a common view, wherein each auction management record displays information **(1603, 1604, 1606, 1608, 1610, 1612, 1614)** pertaining to a respective auction submission. Referring to Fig. 11, the auction management system revisits the auction sites **(506)** to extract updated auction information pertaining to the auction submissions **(1114)**. The auction management system then updates the auction monitoring report with the updated auction information **(1116)**. Referring to Fig. 12, the auction management system determines that a successful auction submission has resulted in a sale to a buyer **(1202)** and updates the auction management record for the successful auction submission with closed auction data associated with the sale **(1204-1212)**. See App. at 19/12-21/26.

Referring again to Figs. 16-17, the auction management system displays tracking fields **(1602)** in association with the auction management record for the successful auction submission identifying post-sale activities to be performed in connection with the sale; and alters the view of the tracking fields **(1702, 1704)** to indicate completion of the associated post-sale activities.

**Claim 82:**

Referring to Fig. 1, claim 82 is directed to a computer-readable medium storing computer-executable instructions for causing a computer-controlled apparatus, referred to as the auction consolidator **(20)** in the illustrated embodiment, to implement an auction management system **(10)**. See App. at 8/21-9/19. The full set of computer-executable instructions are described with reference to the flow charts of Figs. 5-15. See App. at 12/15-25/15.

Referring to Fig. 2, the auction management system creates an electronic inventory library comprising inventory records **(40)** corresponding to items to be offered for sale at auction; an electronic image library **(48)** comprising images of the items in which each image is configured to be reusable for creating the auction submissions; an electronic textual description library **(46)** of the items in which each textual description is configured to be reusable for creating the auction submissions. The auction management system also includes an electronic advertising template library **(50)** in which each advertising template is configured to be reusable for creating the auction submissions. See also Fig. 8 **(804-818)**. See App. at 9/20-10/18 and 15/22-16/26.

Referring to Fig. 3, the auction management system displays a menu-driven user interface configured to receive user commands creating the auction submission, which is shown conceptually as the finalizer **(28)**, the parser **(32)**, and the auction monitor **(32)**. Referring to Fig. 9, the auction management system receives user instructions **(902-918)** through the user interface to create a subject auction submission for a selected item. The user instructions include a selected inventory record in the inventory library, a selected image in the image library, a selected textual description in the textual description library, a selected advertising template in the advertising template library. The auction management system then automatically creates **(912-914)** the subject auction submission by combining the selected image, the selected textual description, and a set of auction parameters in a format defined by the selected advertisement template. See Fig. 9 and App. at 4/11-17; 16/27-17/24. See also Fig. 10, which indicates automatic ad creation **(1006)** and App. at 18/6-12.

The auction management system also obtains predefined entries, user input entries, or a combination of predefined and user input entries setting selected values for the auction parameters and displays the selected values in connection with corresponding auction parameters **(914)**. Once the user approves the ad, the auction management system store the subject auction submission in an electronic auction submission library comprising a plurality of previously posted auction submissions **(918)**. The auction management system then posts the subject auction submission to an electronic auction site to offer the item for sale at a subject auction **(504)**, which is shown in detail on Fig. 10 **(1002-1018)**. See App. 4/11-17 and 16/27-17/24.

### **Argument**

Applicant and the Examiner agree that this appeal turns on the resolution of three points of contention concerning the scope and content of the cited references:

(a) whether Rackson discloses or suggests a menu-driven utility for creating, storing and posting auction submissions as recited in Claim 82;

(b) whether Rackson in combination with Conklin disclose or suggest an auction monitoring report with alterable tracking fields for identifying the status of post-sale activities as recited in Claim 73; and

(c) whether Rackson in combination with Conklin disclose or suggest an auction management system that includes a menu-driven utility for creating, storing and posting auction submissions; an auction monitoring report with tracking fields for identifying the status of post-sale activities; and an auction consolidation engine as recited in Claim 67. See Amended Appeal Brief at p. 2; Examiner's Answer at p. 2 (Grounds of Rejection to be Reviewed on Appeal).

Because item (c) effectively incorporates items (a) and (b) through the combination recited in Claim 67, the issues on appeal can be reduced to items (a) and (b), which can ultimately be resolved through a correct understanding of the content of the cited references, Rackson and Conklin. In sum, Applicant contends that Rackson fails to disclose a menu-driven utility for creating auction submissions from components (advertisement templates, product images and textual descriptions) identified and parameters entered through a menu-driven user interface as recited in Claim 82, whereas the Examiner contends that Rackson does disclose these element of the claimed invention. The menu-driven utility is also recited, in somewhat different language, in the first clause of Claim 67. Similarly, Applicant contends that Conklin in combination with Rackson fails to disclose an auction monitoring report with alterable tracking fields for identifying the status of post-sale activities as recited in Claim 73, whereas the Examiner contends that Conklin in combination with Rackson does disclose these features. The auction monitoring report with alterable tracking fields is also recited, in somewhat different language, in the second clause of Claim 67. Claim 67 recites a combination of the menu-driven, the auction monitoring report with alterable tracking fields, and an auction consolidation engine.

Accordingly, Applicant believes that this appeal can be boiled down to an examination of Rackson and Conklin and a comparison between what these references disclose and the subject matter recited in the disputed claims. Applicant contends that, when read fairly and given reasonable interpretations of the subject matter actually show in the figures and state in the text of these references, Rackson and Conklin fail to disclose or suggest the features of the claimed invention.

### **The Menu-Driven Utility for Assembling Auction Submissions**

The Examiner's Answer contends that it is unclear as to what Applicant regards to be a "menu driven utility" within the context of the disputed claims. See Examiner's Answer at p. 11. For the purpose of descriptive convenience, Applicant has used the terminology "menu driven utility" as a short hand expression to refer to the subject matter recited in Claim 82 as well as the subject matter recited in the first clause of Claim 67. The claim language has been explicitly mapped to the specification and drawings to avoid any possibility of confusion. Although Claim 67 expressly recites a "menu driven utility" whereas claim 82 recites a "menu-driven user interface," this does not diminish the clarity of the claim language. The first clause of Claim 67 describes the "menu driven utility" in terms of the functions performed by the utility, whereas Claim 82 recites the steps implemented by the menu-driven user utility in somewhat greater detail, including the display of a menu-driven user interface. Although the specific wording is not identical, both expressions are supported by the specification and validly presented for examination and appeal. The fact that the invention has been claimed with slightly different language in different claim is a standard practice that should not be a source confusion or contention at this point in the examination process. Applicant therefore respectfully submits that there is no genuine issue concerning the clarity of the subject matter recited in Claim 82 and the first clause of Claim 67.

Applicant does agree that a question to be resolved through the present appeal is whether Rackson, when read fairly and given reasonable construction, discloses or suggests "a menu-driven system for assembling auction submissions from predefined advertisement templates, product images, textual descriptions and user-specified parameters entered into the advertisement templates, and to store the auction submissions in an electronic auction submission library." See Examiner's Answer at



p. 12. The claim language quoted above is taken literally from Claim 67, which is recited in somewhat different and more detailed language in Claim 82. There is no dispute that the only relevant teaching in Rackson is the following passage, which is cited in couple of different formats in the Appeal Brief and the Examiner's Answer:

The seller or the multi-auction service may specify the selling parameters of the offer to include, but are not limited to, some or all of the following: starting date and time; closing date and time; reserve price; a successful bid range; quantity of items; item description which may comprise in addition to text, graphic representation such as image file, photograph; audio file; video clip or other content that provides a representation of the item. These parameters may be defined by the seller with assistance by the multi-auction service or may be generated exclusively by the multi-auction service.

Rackson at col. 9, lines 24-35 (see also col. 3, lines 16-33).

This passage merely states that the user may include the listed types of selling parameters in an auction submission and further states that, "These parameters may be defined by the seller with assistance by the multi-auction service or may be generated exclusively by the multi-auction service" (emphasis added). That is, Rackson suggests that the "selling parameters" may be generated exclusively by the multi-auction service, or the "selling parameters" may be defined by the seller with assistance provided by the multi-auction service. It should be noted, however, that Rackson says nothing about creating auction submissions containing those parameters. This is an important distinction – Rackson suggests that the multi-auction system is capable of generating or assisting the user in defining selling parameters but it says nothing about automatically incorporating those parameters into auction submissions. This is because the system described by Rackson is primarily concerned with a system for automatically computing optimal bid parameters and as a result, this reference does not describe or suggest a system for creating auction submissions. This construction of Rackson is consistent with, and fairly compelled by, the fact that the only relevant passage cited from Rackson merely states that the multi-auction service may generate or provide assistance in the definition of the selling parameters and has no disclosure whatsoever concerning a menu-driven utility for incorporating those parameters into auction submissions

containing predefined components (advertisement templates, product images and textual descriptions) selected through the menu-driven utility.

It should be emphasized that the cited passage from Rackson does not suggest that the multi-auction service generates or provides assistance in the generation of auction submissions, but only states that the multi-auction service defines or provides assistance in the definition of auction parameters. This is because the cited passage reflects the main feature of the Rackson invention described elsewhere, in which the multi-auction service determines "optimal bidding parameters" for an item to be sold on multiple auctions. See, for example, Box 612 on Figure 13 (Multi-Auction Service Determines Optimal Bidding Parameters) and the specification col. 24, lines 57-8 ("Once the bidder defines the item(s) to be bid upon at step 600 [i.e., by entering the data specified on Figure 12], the multi-auction service...[implements the bid]...") In order to place the bid, the system computes an "optimum bid" for the specified item (step 612), determines the desired auction site on which to post the optimum bid (step 650), and places the optimum bid on the desired site (654) (emphasis added)." That is, Rackson describes a system that automatically determines auction parameters including an optimal bit price, and is not concerned with a menu-driven utility that automatically creates auction submissions to combine the auction parameters with selected auction submission components, including advertising templates, product images and textual descriptions, to create and store auction submissions suitable for posting on auction sites.

When properly understood, it becomes clear that cited passage of Rackson actually refers to the feature of that system in which the multi-action system determines the optimal bidding parameters, and has nothing to do with automatically assembling auction submission from component parts identified through a menu-driven utility. As a result, Applicant maintains that Rackson fails to contain any disclosure that could reasonably be described or interpreted to disclose a menu-driven utility configured to "assemble" (Claim 67) or "automatically create" (Claim 82) auction submissions from predefined components (advertisement templates, product images and textual descriptions) identified through the menu-driven utility and parameters entered into the menu-driven utility.

In other words, Rackson suggests that the multi-auction service may assist in the creation of selling parameters, or it may generate the selling parameters on its own accord, while it contains no description whatsoever of a system that creates auction submissions from component items selected through a menu-driven user interface. This appears to be the crux of the disagreement with respect to Rackson. Applicant contends that the cited passage of Rackson merely provides a list of selling parameters that can be included in an auction submission and a statement to the effect that the multi-auction service may generate the selling parameters or assist in the creation of the selling parameters, without providing any teaching of how the multi-auction service might actually go about assembling an auction submission containing the parameters. Rackson teaches that the multi-auction service may provide assistance in the creation of selling parameters, and that the multi-auction service may actually generate the selling parameters automatically. But Rackson contains no teaching or suggestion concerning the assembly of auction submissions from or based on those parameters.

Accordingly, Applicant submits that Rackson contains no disclosure or suggestion of the subject matter literally recited in the Claim 82 and the first clause of Claim 67. Specifically, Rackson does not teach or suggest "a menu-driven system for assembling auction submissions from predefined advertisement templates, product images, textual descriptions and user-specified parameters entered into the advertisement templates, and to store the auction submissions in an electronic auction submission library." Nowhere in Rackson can the reader find mention of "a menu-driven utility" or a "menu-driven user interface" for assembling auction submission. Nowhere in Rackson can the reader find mention of "predefined advertisement templates" or "user-specified parameters entered into the advertisement templates." Nowhere in Rackson can the reader find mention of a menu-driven utility configured for receiving user selections identifying auction submission components and "automatically creating the subject auction submission by combining the selected image, the selected textual description, and a set of auction parameters in a format defined by the selected advertisement template." None of this subject matter is taught or suggested by Rackson.

Because Rackson does not literally describe a menu-driven utility, predefined advertisement templates, or any other features of a system for creating auction

submissions, the rejection on appeal must be construed to contend that Rackson "necessarily" or "inherently" discloses these element of the claimed invention. See Examiner's Answer at p. 12 ("the computer necessarily has access to a database of images that can be reused" (emphasis added)). This issue on appeal therefore reduces down to a question of how much functionality can be read into Rackson as "necessary" or "inherent" features of that system based on the teaching that actually appears in the reference. In essence, the Examiner contends that because Rackson at col. 9, lines 24-35 teaches a system that is capable of defining or assisting the definition of auction parameters, it "necessarily" or "inherently" discloses the claimed features of a menu-driven utility for assembling auction submissions from predefined advertisement templates, product images, textual descriptions and user-specified parameters entered into the advertisement templates. Applicant disagrees. The system described in Rackson for defining or assisting in the definition of auction parameters is not the same thing as, and does not inherently disclose, a menu-driven utility for assembling auction submissions from predefined advertisement templates, product images, textual descriptions and user-specified parameters entered into the advertisement templates. Applicant respectfully submits that this issue is beyond reasonable disagreement once the content of Rackson is properly understood.

#### **Auction Monitoring Report for Tracking Post-Sale Tracking Fields**

The Examiner has again alleged a lack of clarity in the claims with respect to the auction monitoring report, questioning whether Applicant intends to claim an auction monitoring report that "comprises tracking fields" or and auction monitoring report that "has associated tracking fields." The second clause of Claim 67 as well as Claim 73 are directed to the auction monitoring report. The second clause of Claim 67 contains a shorter description of the auction monitoring report, whereas Claim 73 describes the auction monitoring report in greater detail with slightly different language. Applicant has used the terminology "auction monitoring report" to refer to the subject matter of both claims for the purpose of descriptive convenience. The claim language has been explicitly mapped to the specification and drawings to avoid any possibility of confusion. Although the specific wording is not identical, both expressions are supported by the specification and validly presented for examination and appeal. The fact that the

invention has been claimed with slightly different language in different claim is a standard practice that should not be a source confusion or contention at this point in the examination process. Applicant therefore respectfully submits that there is no genuine issue concerning the clarity of the subject matter recited in Claim 73 and the second clause of Claim 67.

Applicant contends that the same basic problem described above with respect to the menu-driven utility has also occurred with respect to the auction monitoring report for tracking post-sale activity. Namely, the cited reference, in this case Conklin, does not disclose the subject matter for which it has been cited. There is no dispute that Conklin is not directed to an auction monitoring system, but is instead directed to a multivariate negotiation engine for iterative bargaining. See, Conklin at col. 13, lines 65-67. Basically, Conklin describes a system in which a sponsor provides and manages an electronic "community" that includes a common set of documents that allow multiple parties to access the common documents as a way to conduct and manage multi-party negotiations. Id. at col. 14, lines 1-26. The specific disclosure from Conklin at issue is contained in Figure 12, which is not described in the detailed description of the patent. The Examiner has also relied on the description at col. 7, lines 45-58 as disclosing the "thinking behind the invention," which concerns an electronic document system that can be used to track the steps involved in a transaction to avoid disputes involving the "battle of the forms" in commercial transaction. See Examiner's Answer at pp. 14-15.

Applicant and the Examiner appear to have the same understanding of what Conklin discloses, but differ as to whether the system described in Conklin is the same thing as the claimed invention. The Examiner contends that the list of orders shown in Figure 12 of Conklin showing the "status" of a line item, together with the general idea that an electronic document system used to track the steps involved in a transaction, teaches or suggests the claimed invention. Applicant agrees that the "status" item shown on the order form Figure 12 implies that the status can be changed from time to time to indicate changes in status. But that is not the same thing as an auction monitoring report that includes alterable tracking fields to monitor the status of post-sale activities associated with auctions. Conklin does not describe auctions and, hence, does not describe post-sale activities associated with auctions as recited in Claims 67 and 73. Nor does Conklin disclose automatically performing certain post-sale activities

in accordance with predefined settings data and altering the status an associated tracking field to indicate completion of those particular post-sale activities, as recited in claims 69 and 75. These elements of the claimed invention are simply not found in Conklin.

Moreover, there is no support in the Conklin or Rackson for an alleged combination of the multi-party negotiation system of Conklin with the auction monitoring features of Rackson. And, even if these references are combined, the combination of Figure 12 of Conklin and the auction monitoring features of Rackson would not produce the claimed invention. Specifically, the putative combination would be Figure 12 of Conklin in which the line items correspond to auctions. That is, there would be one "status" field per line item, presumably stating the status of an associated auction, such as "pending," "open" or "closed." There is no further detail shown in Figure 12 of Conklin to suggest the use of multiple tracking fields for each line item to track multiple post-sale activities associated with each auction. In view of the extremely limited disclosure of Conklin (e.g., no detailed description of Figure 12), Applicant contends that the Examiner has not found the elements of the claimed invention in the cited reference, but has instead asserted that the reference discloses elements of the claimed invention without any literal in the cited reference. Accordingly, Applicant respectfully submits that the rejection should not be sustained.

Respectfully submitted,

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